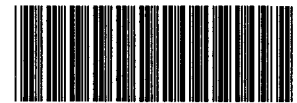


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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, CHAIRMAN

WILLIAM A. MUNDELL

JEFF HATCH-MILLER

MIKE GLEASON

KRISTIN K. MAYES

IN THE MATTER OF THE APPLICATION OF
ALLTEL COMMUNICATIONS, INC. FOR
DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER
PURSUANT TO SECTION 214(e)(2) OF THE
COMMUNICATIONS ACT OF 1934

Docket No. T-03887A-03-0316

POST HEARING RESPONSE BRIEF OF
ALLTEL COMMUNICATIONS, INC.

Arizona Corporation Commission

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I. INTRODUCTION

This case addresses approval of ALLTEL's Application for Designation as an Eligible Telecommunications Carrier pursuant to §214(e)(2) of the Act. As set forth in ALLTEL's opening brief, ALLTEL meets all prerequisites for ETC designation and ALLTEL's Application should be approved. Staff supports approval of the Application. Only ALLTEL's competitors (the Arizona Local Exchange Carriers Association, "ALECA" or "rural ILEC Intervenor") oppose the Application. .

ALLTEL clearly satisfies the requirements of §214(e)(2) for Qwest's non-rural wire centers, and it is, therefore, undisputed that ALLTEL's designation as an ETC for those areas should be approved. With respect to the rural wire centers at issue, Staff's Report confirms that ALLTEL meets the public interest considerations recently set forth by the FCC in its "*Virginia Cellular*" order. (Staff Report (Ex. S-1) at 9-10, 12; Hearing Transcript ("Transcript") at 218, line 7 to 220, line 5.) Nevertheless, ALECA alleges that ALLTEL has not demonstrated the capability and the commitment to provide the supported services throughout the requested rural service areas and that Staff has not evaluated the Application with sufficient rigor to make a finding of public interest. (ALECA Post-Hearing Brief at 3.) ALECA further attempts to discount the importance of increased competition by accusing ALLTEL and Staff of placing too much emphasis on competition as a public interest consideration. (*Id* at 4.) None of ALECA's allegations, however, sufficiently refutes the facts that ALLTEL's Application is in compliance with existing law and that the Application is in the public interest. Indeed, none of ALECA's challenges has rebutted the fact that ALLTEL's designation as an ETC will result in consumers being provided greater choice, mobility, and expanded calling options or that those are legitimate public interest factors to be considered.

II. ALLTEL'S APPLICATION SATISFIES EXISTING LEGAL REQUIREMENTS

Consistent with §214(e)(2), ALLTEL is a common carrier (Krajci Direct Testimony (Ex. A-2) at 6, lines 9-13; 47 U.S.C. §153(10); 47 C.F.R. §20.9(a)(7)) that will advertise and offer the

1 nine supported services¹ either through its own facilities² or a combination of its own facilities and
2 resale throughout its designated service area (Application (Ex. A-1) at ¶5 of the Affidavit).
3 Further, in the service areas of rural telecommunications carriers, ALLTEL has demonstrated (and
4 Staff has agreed) that ALLTEL's designation as an ETC is in the public interest.

5 ALECA primarily disputes this "public interest" element.³ In citing the FCC's suggested
6 methods for demonstrating ETC capability and commitment, ALECA notes that there are several
7 possible methods including describing the proposed service technology, demonstrating the extent
8 to which the carrier may otherwise be providing telecommunications, describing the extent to
9 which the carrier has entered into resale agreements, or ensuring compliance with the ETC
10 obligations via a sworn affidavit. (ALECA Post-Hearing Brief at 6.) Yet, ALECA fails to
11 recognize that ALLTEL has done several of these. For example, ALLTEL demonstrated that it
12 currently serves approximately 330,000 wireless Arizona customers. (Transcript at 33, lines
13 23-24.) Further, ALLTEL representatives provided a sworn affidavit and live testimony under oath
14

15
16 ¹ ALLTEL provides voice grade access to the public switched telephone network (Application (Ex. A-1) at 3
17 and ¶5(a) of the Affidavit; Krajci Direct Testimony (Ex. A-2) at 3, lines 3-12; Transcript at 65, lines 18-25), will
18 comply with all minimum local usage requirements adopted by the FCC (Application (Ex. A-1) at ¶5(b) of the
19 Affidavit; Krajci Direct Testimony (Ex. A-2) at 4, lines 1-3), uses out-of-band digital signaling as a functional
20 equivalent to dual-tone, multi-frequency (Application (Ex. A-1) at 3-4 and ¶5(c) of the Affidavit; Krajci Direct
21 Testimony (Ex. A-2) at 4, lines 4-12), provides single-party service or its functional equivalent (Application (Ex. A-1)
22 at 4 and ¶5(d) of the Affidavit; Krajci Direct Testimony (Ex. A-2) at 4, lines 13-20), provides access to emergency
service (Application (Ex. A-1) at 4 and ¶5(e) of the Affidavit; Krajci Direct Testimony (Ex. A-2) at 4-5), provides
access to operator services (Application (Ex. A-1) at 4 and ¶5(f) of the Affidavit; Krajci Direct Testimony (Ex. A-2) at
5, lines 4-9), provides customers the ability to make and receive interexchange or toll calls (Application (Ex. A-1) at 5
and ¶5(g) of the Affidavit; Krajci Direct Testimony (Ex. A-2) at 5, lines 10-17), provides access to directory assistance
(Application (Ex. A-1) at 5 and ¶5(h) of the Affidavit; Krajci Direct Testimony (Ex. A-2) at 5, lines 18-21), and
attested that once designated an ETC will participate in the Lifeline program (Application (Ex. A-1) at ¶5(i) of the
Affidavit; Krajci Direct Testimony (Ex. A-2) at 5-6; *see*, 47 C.F.R. §54.101(a)).

23 ² ALLTEL certified that it will provide the supported services using its existing network infrastructure
24 (Application (Ex. A-1) at 5-6 and ¶6 of the Affidavit), which includes the antenna, cell-sites, towers, trunking, mobile
switching, and interconnection facilities that ALLTEL uses today to serve its existing conventional mobile cellular
service customers (Application (Ex. A-1) at 6 and ¶6 of the Affidavit).

25 ³ ALECA relies on cases by the Minnesota Public Utilities and Alaska Regulatory Commissions to show that
26 ALLTEL's Application is not in the public interest. (ALECA Post-Hearing Brief at 7-9.) However, ALECA does not
27 indicate how the carriers in those proceedings bear any resemblance to ALLTEL. For example, in the Minnesota case,
Nextel acknowledged that it could not then serve large areas of its service area. (*Id* at 8.) The record in this matter
shows that this is not the case with ALLTEL. Moreover, those other state PUC decisions are not binding on this
Commission and are not necessarily consistent with the analysis by the ACC in prior ETC dockets.

1 attesting to ALLTEL's commitment to comply with ETC obligations. While ALECA admits that
2 "there are any number of ways that an applicant can evidence" its commitment, it then contends
3 that ALLTEL has not provided such evidence but merely a "vague assertion of intent." (ALECA
4 Post-Hearing Brief at 9-10.) Indeed, ALLTEL's notarized Affidavit and live, sworn testimony are -
5 at a minimum - more than a "vague assertion."

6 ALECA (notably without providing any citations in the record) lists its interpretation of
7 various items it contends are supported by the record to disprove that ALLTEL's Application is in
8 the public interest. (*Id* at 10, *et. seq.*) Many of the items pertain to what ALECA describes as
9 ALLTEL's failure to identify construction projects. (*Id* at 10.) ALLTEL demonstrated that it
10 continuously evaluates its coverage areas and targets funds for construction, expansion, operation,
11 and maintenance of facilities (Transcript at 61 -62) and that future construction plans may change
12 based on changes in consumer need, demands for service or other unforeseen variables (Transcript
13 at 131-132). ALLTEL agreed to Commission audit of its expenditures and to annually self-certify
14 that it is using the funds in the manner in which they are intended to be used. (Transcript at 57,
15 lines 8-12.) Such monitoring is a more appropriate mechanism for ensuring that construction is
16 being done appropriately and effectively. (Transcript at 132-133.) ALECA's attempts to make
17 ALLTEL's Application dependent on specific construction plans are inappropriate and not
18 consistent with existing ETC regulations.

19 The rural ILEC Intervenor also argue that "Staff has largely accepted at face value -
20 without adequate investigation - the assertions of ALLTEL." (ALECA Post-Hearing Brief at 19.)
21 Significantly, ALECA did not set forth any evidence demonstrating that such an independent
22 evaluation was required or otherwise warranted. Indeed, that is not the standard required in
23 analysis of ETC applications. (*See, Virginia Cellular* at ¶14-25.) The record confirms that
24 ALLTEL's Application meets the public interest considerations set forth by the FCC in *Virginia*
25 *Cellular* as those considerations are similar to the standards applied by Staff to ALLTEL's
26 Application. (Transcript at 262 at lines 6-10; *See also* Staff Report (Ex. S-1) at 9-13.)

27 • First, ALLTEL will offer increased choices including mobility for commuters, better access

1 to emergency services, mitigation of public safety risks, and elimination of geographic
2 isolation (Transcript at 219, lines 3-20), lower toll costs from expanded calling areas
3 (Transcript at 219, lines 22-25), and new technologies like Internet service and text
4 messaging (Transcript at 88, lines 1-2). Staff identified similar benefits, including
5 increased consumer choice, increased competition, increase local calling areas, increased
6 mobility and access to advanced services. (Staff Report (Ex. S-1) at 10.)

7 • Second, notwithstanding ALECA's claim that ALLTEL's designation will adversely affect
8 the federal universal service fund (ALECA Post-Hearing Brief at 17), ALLTEL's
9 Application will have minimal to no impact on the federal universal service fund.
10 (Transcript at 27, lines 5-18.) Only less than seven percent of the fund currently is
11 attributable to competitive ETCs like ALLTEL. (Transcript at 116, lines 20-22.) Any
12 universal service surcharge increase resulting from ALLTEL's Arizona ETC designation
13 would be spread across consumers throughout the country. (Transcript at 27, lines 5-18.)
14 Designating ALLTEL as an ETC will not reduce the funds available to rural ILECs.
15 (Transcript at 27, line 19 to 28, line 3; at 241, lines 6-17.)

16 • Third and fourth, ALLTEL's service offering is uniquely advantageous as it offers Arizona
17 customers increased choice over existing wireline or wireless service from a carrier who is
18 committed to using the funds to build out new infrastructure to rural areas. (Transcript at
19 88, lines 15-18.) ALLTEL would file informational tariffs outlining services in its
20 promotional materials (Transcript at 98, lines 1-5), work with Staff to develop a Lifeline
21 complaint resolution process (Transcript at 99, lines 2-5), comply with the Commission's
22 customer service and termination of service rules with respect to Lifeline/Link-Up services
23 (Transcript at 125, lines 1-3), honor the CTIA wireless industry customer service code of
24 conduct (Transcript at 103, lines 8-12), cooperate as to expenditure audits (Transcript at
25 126, lines 14-17), submit annual self-certifications (Transcript at 127, lines 16-19), file
26 service area maps (Transcript at 124 and 149), and provide requested service quality data
27 (Transcript at 124, lines 14-16).

- Fifth, ALLTEL demonstrated its ability to serve designated service areas within a reasonable time by committing to using support for the maintenance, construction, and upgrading of the facilities serving the areas in which ALLTEL is certified. (Transcript at 105, lines 11-14.) ALLTEL agreed to offer Lifeline/Link-up services to qualifying low income applicants within 90 days of a decision in this matter. (Transcript at 97, lines 6-14.)

These considerations dispel ALECA's claim that "ALLTEL cannot point to any concrete benefit that will accrue to rural Arizona if ALLTEL is designated an ETC." (ALECA Closing Post-Hearing Brief at 14.) Further, ALECA's fear that "[b]y failing to obtain specific commitments from ALLTEL regarding the use of federal universal service support in rural areas of the States, Staff has missed an opportunity to ensure benefits for rural Arizona" is misguided. (*Id* at 21.) ALECA's concerns are addressed and ameliorated by Staff's recommended conditions.⁴ Ongoing monitoring by the Commission will ensure that ALLTEL properly uses the funds and that Arizona consumers can – and will continue to – realize benefits from the funds. Staff's recommended conditions should not be further modified to lessen the impact on increased competition on the rural ILECS.

III. CONCLUSION


ALLTEL's Application for ETC designation is a straightforward request to be considered by this Commission under existing laws, rules, and procedures and should be approved. The criteria to be considered have been established by the FCC in 47 U.S.C. §214(e), and ALLTEL and Staff agree (and the record clearly reflects) that ALLTEL has demonstrated that it meets those criteria.

⁴ It should be noted that, while ALECA recommended that ALLTEL's designation be conditioned on singular treatment of ALLTEL with respect to future changes in federal ETC eligibility criteria (ALECA Post-Hearing Brief at 27), such a condition is inappropriate and unnecessary. Whatever changes are ultimately enacted by the FCC (if there are any) would be applicable to all ETCs (both wireline and wireless). (Transcript at 95, lines 18-20; at 130-131; at 242-243.)

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1 RESPECTFULLY SUBMITTED this 2nd day of April, 2004.

2 ALLTEL COMMUNICATIONS, INC.

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